IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6052 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ADARSH KANYA KELVANI MANDIR

Versus

STATE OF GUJARAT

Appearance:

MR AJ SHASTRI for Petitioner

MS MANISHA LAVKUMAR for Respondent No. 1 & 2

MR AR THAKKAR for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/08/2000

ORAL JUDGEMENT

#. Challenge has been made by this petition by the petitioner-trust to the order dated 29th July 1991 of respondent No.2. Under this order, grant for salaries to be paid to respondent No.3 has been denied. Not only

this, the respondent No.2 further said that no permission can be granted to the management of school for filing appeal before the Government against that order.

#. The facts of the case are to be stated briefly. The respondent No.3 was placed under suspension in contemplation of departmental inquiry by petitioner under the order dated 30th March 1989. The petitioner approached the District Education Officer for rectification of this order but on 12th May 1989, rectification to the suspension order was not granted by the District Education Officer. Aggrieved by this order, the petitioner preferred application No.329 of 1989 before the Gujarat Secondary Education Tribunal at Ahmedabad. In that application, prayer has also been made for grant of interim relief but interim relief was not granted. However, option was given to the petitioner to take or not to take work from respondent No.3 but salary has to be paid to her. The petitioner was permitted to call respondent No.3 for inquiry. This order has been passed on 3.7.89. Against this order, the respondent No.3 preferred special civil application No.4925 of 1989 and prayer has been made for grant of interim relief which has been declined on 13th July 1989. This petition has been dismissed by the court today.

#. The respondent No.3 was dismissed from services after holding departmental inquiry and against that order, she preferred application No.304 of 1991 before the Tribunal. Both these applications are pending. In the application No.304 of 1991, the respondent No.3 filed an application for grant of interim relief and the Tribunal has granted interim relief in terms that the petitioner shall not appoint anyone in place of respondent No.3.

#. The learned counsel for respondent No.3 does not dispute that during the period from the date of order of suspension till the date of dismissal of respondent No.3, the petitioner has paid full salary to her.

#. Under the impugned order, the respondent No.2 has declined to grant the grant for salaries to be paid to respondent No.3. The learned counsel for the petitioner contended that as the order of the Tribunal has not been stayed by this court in the writ petition filed by respondent No.3, the petitioner had to pay salaries to respondent No.3 and grant for that has to be given to the petitioner by State Government. It has next been contended that there is no question of causing any delay in the inquiry. Otherwise also, the the order of suspension was not rectified by the District Education

Officer, it cannot be taken to be a case of suspension of respondent No.3 and the respondent No.3 was entitled for full salary. But liability put upon the trust for payment of salary to respondent No.3 is wholly arbitrary and unjustified.

#. On the other hand, the learned counsel for respondents supported the impugned order.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The order of respondent No.2 is wholly perverse and it cannot be allowed to stand. The respondent No.2 has not appreciated the provisions of the Secondary Education Act. Any order of suspension made of the employee by the trust of the school receiving grant-in-aid will come into force only on its rectification by the District Education Officer. In this case admittedly the order of suspension made by petitioner placing thereunder the respondent No.3 under suspension, has not been rectified by the District Education Officer. That order of District Education Officer has been challenged by petitioner but the Tribunal has also not granted any relief in favour of petitioner and so the suspension order is not there and respondent No.3 was entitled for full salary. This approach of respondent No.2 that there was delay in inquiry and as a result of which the respondent No.3 has to be given 2/3 of salary etc. is wholly irrelevant to the main issue. Under the order of the Tribunal the interim relief application filed by petitioner in Application No.329 of 1989 has not been granted. The operative part of the Tribunal's order in that application is very clear. The merits of the order were not examined by the Tribunal. It was left to be examined at the final hearing. When the order of suspension was not rectified and it is also not the order of the Tribunal that the petitioner should pay salary to respondent No.3 from its own and not from the grant, how far it is justified by respondent No.2 to withhold the grant for salary paid by petitioner to respondent No.3. It is not the case where the petitioner is to make payment of salary to respondent No.3 from its own resources. When the suspension order was not rectified, relationship of employer and employee continues between petitioner and respondent No.3 and salary has to be paid to her and that has been done. So long as the respondent No.3 continues to be the employee of the school, the liability to pay the salary continues of the management and as a result of which grant is also to be given for that teacher. The matters were sub-judice before the

Tribunal and this court and that has incorrectly been taken to be against the petitioner. The petitioner has taken all the steps to give effect to the order of suspension but the District Education Officer has not rectified and when it is not rectified, I fail to see how the State of Gujarat can disown its liability to pay grant for salaries which have been paid by petitioner to the respondent No.3. This is a case where the respondent No.2 has not taken note of the fact that the District Education Officer has not rectified the suspension order made by petitioner.

#. As a result of aforesaid discussion, the order dated 29th July 1991, annexure-D, of the Joint Director of Education (Sec.) Gujarat State, Gandhinagar, is perverse and it cannot be allowed to stand. Accordingly, this petition succeeds and the same is allowed and the order dated 29th July 1991 impugned in this special civil application is quashed and set aside. Rule is made absolute. Because of the perverse order of the State of Gujarat, the petitioner has to come up before this court and it is a fit case where the respondent-State of Gujarat is to be saddled with the cost of the matter in favour of petitioner. The respondent-State of Gujarat is directed to pay Rs.4,000/= as costs of this petition to the petitioner.

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(sunil)